

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

THOMAS J. KELLY

Defendant.

C.A. No. XXX

DECLARATION OF MARK B. ALBERS

I, Mark B. Albers, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. Since October 2012, I have been employed as a Forensic Accountant with the U.S. Securities and Exchange Commission (“the Commission”) in its Boston Regional Office. My duties include conducting investigations relating to potential violations of the federal securities laws.

2. My relevant professional experience includes almost three years as an Auditor for Deloitte and Touche LLP and thirteen years as a Forensic Accountant for Deloitte Financial Advisory Services LLP, where I investigated financial statement fraud, asset misappropriation fraud, bribery and corruption, and securities litigation cases.

3. I hold a Bachelors of Science in Business Administration with a concentration in Accounting from Michigan State University. I am a Certified Public Accountant in the states of Illinois and Michigan and I am a Certified Fraud Examiner.

4. I make this declaration based upon my personal knowledge, except where indicated, and in support of the Commission’s Motion Requesting Remedies.

5. On or about July 10, 2013, I was asked to review certain documents that were gathered through the Commission's investigation into possible violations of federal securities laws by Thomas J. Kelly for the purpose of calculating the amount of disgorgement of ill-gotten gains from Mr. Kelly's trading in EIGH stock from October 23, 2009 through October 12, 2010.

6. The purpose of this declaration is to relay certain information that Commission staff has gathered through its investigation, including, but not limited to, information obtained from Mr. Kelly's Schwab brokerage account #5062-8243. After reviewing this information, I calculated the total amount of Mr. Kelly's profits subject to disgorgement from trading in 8000, Inc. as \$415,592. I arrived at this amount as follows:

7. I reviewed Mr. Kelly's Schwab brokerage account #5062-8243 to identify all activity involving 8000, Inc. (trade symbol EIGH) from inception of the account through the end of Mr. Kelly's trade activity for this security. Based on my review, I noted the following:

- a. Schwab account #5062-8243 was opened in April 2007.
- b. Mr. Kelly's initial EIGH transaction in account #5062-8243 occurred on August 21, 2007.
- c. Mr. Kelly's last EIGH transaction in account #5062-8243 occurred on October 12, 2010.

No other Schwab brokerage accounts or Mr. Kelly's non-Schwab brokerage or bank accounts were analyzed as part of my disgorgement calculation.

8. I created an electronic spreadsheet of all EIGH transaction activity including trade date, trade type (buy or sell), trade quantity, share price, principal amount (trade quantity multiplied by share price) and cumulative total shares remaining.

9. I calculated profits from trades in EIGH occurring during the Relevant Trading Period, which is defined as anytime between October 23, 2009 – the day that Mr. Kelly was appointed CEO of 8000, Inc. – through October 12, 2010 – the last day Mr. Kelly traded in 8000, Inc. in Schwab account #5062-8243) (hereafter “Relevant Trading Period”). Trade activity details that Mr. Kelly sold 6,733,155 shares of EIGH during the Relevant Trading Period.

10. To calculate profits from trades in EIGH occurring during the Relevant Trading Period, I multiplied the number of shares sold in each transaction by the share price at the time of the sale to arrive at the principal amount of the trade (principal amount excludes commissions and any other fees incurred to execute the trade). I added the principal amounts of each sale to arrive at total proceeds of \$427,637 during the Relevant Trading Period.

11. To determine the cost-basis for the 6,733,155 shares sold during the Relevant Trading Period, I utilized the First-In-First-Out (“FIFO”) inventory method which states that the securities bought or acquired first are sold, used or disposed of first.

12. The cost basis of the 6,733,155 shares began with EIGH purchase transactions on September 4, 2009. For each purchase transaction, I multiplied the number of shares purchased by the share price at the time of the purchase to arrive at the principal amount of the trade (principal amount excludes commissions and any other fees

incurred to execute the trade). I added the principal amounts of each purchase to arrive at total cost-basis of \$12,046.

13. Total proceeds realized during the Relevant Trading Period of \$427,637 were then netted against the cost basis of purchases during that period of \$12,046 to arrive at total proceeds of \$415,592.

14. The Commission's standard practice is to seek pre-judgment interest on a defendant's disgorgement obligation calculated in the same manner that the Internal Revenue Service uses to calculate tax over-payments or under-payments. Applying that methodology, the pre-judgment interest on Mr. Kelly's disgorgement obligation of \$415,592, calculated from December 31, 2009 through the date of this declaration on a quarterly basis, is \$46,697, for a total disgorgement obligation of \$462,289. A table explaining this calculation is attached hereto as Exhibit A.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 13, 2013, in Boston, Massachusetts.


Mark B. Albers

Exhibit A**Calculation of Prejudgment Interest on Mr. Kelly's Disgorged Trading Profits**

Mr. Kelly's profits on EIGH trades were summed by calendar year quarter and prejudgment interest was calculated starting on the last day of the quarter. The chart below summarizes the results of the interest calculation.

Year of Investor Contribution	Trading Profit	Prejudgment Interest	Total
Q42009	\$103,848	\$13,764	\$117,612
Q12010	\$49,457	\$6,007	\$55,464
Q22010	\$140,928	\$15,558	\$156,485
Q32010	\$59,049	\$5,864	\$64,913
Q42010	62,311	\$5,504	\$67,815
Grand Total	\$415,592	\$46,697	\$462,289

The below details the prejudgment interest calculation by each respective calendar year:

U.S. Securities and Exchange Commission**Division of Enforcement****Prejudgment Interest Report****Pre-Judgment Interest for Kelly Sales of EIGH - 4th Quarter 2009**

Quarter Range	Annual Rate	Period Rate	Quarter Interest	Principal+Interest
Violation Amount				\$103,848.00
01/01/2010-03/31/2010	4%	0.99%	\$1,024.25	\$104,872.25
04/01/2010-06/30/2010	4%	1%	\$1,045.85	\$105,918.10
07/01/2010-09/30/2010	4%	1.01%	\$1,067.89	\$106,985.99
10/01/2010-12/31/2010	4%	1.01%	\$1,078.65	\$108,064.64
01/01/2011-03/31/2011	3%	0.74%	\$799.38	\$108,864.02
04/01/2011-06/30/2011	4%	1%	\$1,085.66	\$109,949.68
07/01/2011-09/30/2011	4%	1.01%	\$1,108.53	\$111,058.21
10/01/2011-12/31/2011	3%	0.76%	\$839.78	\$111,897.99
01/01/2012-03/31/2012	3%	0.75%	\$834.65	\$112,732.64
04/01/2012-06/30/2012	3%	0.75%	\$840.87	\$113,573.51
07/01/2012-09/30/2012	3%	0.75%	\$856.46	\$114,429.97
10/01/2012-12/31/2012	3%	0.75%	\$862.91	\$115,292.88
01/01/2013-03/31/2013	3%	0.74%	\$852.85	\$116,145.73

04/01/2013-06/30/2013	3%	0.75%	\$868.71	\$117,014.44
07/01/2013-08/31/2013	3%	0.51%	\$596.29	\$117,610.73

Prejudgment Violation Range			Quarter Interest Total	Prejudgment Total
01/01/2010-08/31/2013			\$13,762.73	\$117,610.73

Pre-Judgment Interest for Kelly Sales of EIGH - 1st Quarter 2010

Quarter Range	Annual Rate	Period Rate	Quarter Interest	Principal+Interest
Violation Amount				\$49,457.00
04/01/2010-06/30/2010	4%	1%	\$493.22	\$49,950.22
07/01/2010-09/30/2010	4%	1.01%	\$503.61	\$50,453.83
10/01/2010-12/31/2010	4%	1.01%	\$508.69	\$50,962.52
01/01/2011-03/31/2011	3%	0.74%	\$376.98	\$51,339.50
04/01/2011-06/30/2011	4%	1%	\$511.99	\$51,851.49
07/01/2011-09/30/2011	4%	1.01%	\$522.78	\$52,374.27
10/01/2011-12/31/2011	3%	0.76%	\$396.04	\$52,770.31
01/01/2012-03/31/2012	3%	0.75%	\$393.61	\$53,163.92
04/01/2012-06/30/2012	3%	0.75%	\$396.55	\$53,560.47
07/01/2012-09/30/2012	3%	0.75%	\$403.90	\$53,964.37
10/01/2012-12/31/2012	3%	0.75%	\$406.94	\$54,371.31
01/01/2013-03/31/2013	3%	0.74%	\$402.20	\$54,773.51
04/01/2013-06/30/2013	3%	0.75%	\$409.68	\$55,183.19
07/01/2013-08/31/2013	3%	0.51%	\$281.21	\$55,464.40
Prejudgment Violation Range			Quarter Interest Total	Prejudgment Total
04/01/2010-08/31/2013			\$6,007.40	\$55,464.40

Pre-Judgment Interest for Kelly Sales of EIGH - 2nd Quarter 2010

Quarter Range	Annual Rate	Period Rate	Quarter Interest	Principal+Interest
Violation Amount				\$140,928.00
07/01/2010-09/30/2010	4%	1.01%	\$1,420.86	\$142,348.86
10/01/2010-12/31/2010	4%	1.01%	\$1,435.19	\$143,784.05
01/01/2011-03/31/2011	3%	0.74%	\$1,063.61	\$144,847.66
04/01/2011-06/30/2011	4%	1%	\$1,444.51	\$146,292.17
07/01/2011-09/30/2011	4%	1.01%	\$1,474.95	\$147,767.12

10/01/2011-12/31/2011	3%	0.76%	\$1,117.36	\$148,884.48
01/01/2012-03/31/2012	3%	0.75%	\$1,110.53	\$149,995.01
04/01/2012-06/30/2012	3%	0.75%	\$1,118.82	\$151,113.83
07/01/2012-09/30/2012	3%	0.75%	\$1,139.55	\$152,253.38
10/01/2012-12/31/2012	3%	0.75%	\$1,148.14	\$153,401.52
01/01/2013-03/31/2013	3%	0.74%	\$1,134.75	\$154,536.27
04/01/2013-06/30/2013	3%	0.75%	\$1,155.85	\$155,692.12
07/01/2013-08/31/2013	3%	0.51%	\$793.39	\$156,485.51

Prejudgment Violation Range	Quarter Interest Total	Prejudgment Total
07/01/2010-08/31/2013	\$15,557.51	\$156,485.51

Pre-Judgment Interest for Kelly Sales of EIGH - 3rd Quarter 2010

Quarter Range	Annual Rate	Period Rate	Quarter Interest	Principal+Interest
Violation Amount				\$59,049.00
10/01/2010-12/31/2010	4%	1.01%	\$595.34	\$59,644.34
01/01/2011-03/31/2011	3%	0.74%	\$441.20	\$60,085.54
04/01/2011-06/30/2011	4%	1%	\$599.21	\$60,684.75
07/01/2011-09/30/2011	4%	1.01%	\$611.84	\$61,296.59
10/01/2011-12/31/2011	3%	0.76%	\$463.50	\$61,760.09
01/01/2012-03/31/2012	3%	0.75%	\$460.67	\$62,220.76
04/01/2012-06/30/2012	3%	0.75%	\$464.11	\$62,684.87
07/01/2012-09/30/2012	3%	0.75%	\$472.71	\$63,157.58
10/01/2012-12/31/2012	3%	0.75%	\$476.27	\$63,633.85
01/01/2013-03/31/2013	3%	0.74%	\$470.72	\$64,104.57
04/01/2013-06/30/2013	3%	0.75%	\$479.47	\$64,584.04
07/01/2013-08/31/2013	3%	0.51%	\$329.11	\$64,913.15

Prejudgment Violation Range	Quarter Interest Total	Prejudgment Total
10/01/2010-08/31/2013	\$5,864.15	\$64,913.15

Pre-Judgment Interest for Kelly Sales of EIGH - 4th Quarter 2010

Quarter Range	Annual Rate	Period Rate	Quarter Interest	Principal+Interest
Violation Amount				\$62,311.00

01/01/2011-03/31/2011	3%	0.74%	\$460.93	\$62,771.93
04/01/2011-06/30/2011	4%	1%	\$626.00	\$63,397.93
07/01/2011-09/30/2011	4%	1.01%	\$639.19	\$64,037.12
10/01/2011-12/31/2011	3%	0.76%	\$484.23	\$64,521.35
01/01/2012-03/31/2012	3%	0.75%	\$481.27	\$65,002.62
04/01/2012-06/30/2012	3%	0.75%	\$484.86	\$65,487.48
07/01/2012-09/30/2012	3%	0.75%	\$493.84	\$65,981.32
10/01/2012-12/31/2012	3%	0.75%	\$497.56	\$66,478.88
01/01/2013-03/31/2013	3%	0.74%	\$491.76	\$66,970.64
04/01/2013-06/30/2013	3%	0.75%	\$500.90	\$67,471.54
07/01/2013-08/31/2013	3%	0.51%	\$343.83	\$67,815.37
Prejudgment Violation Range			Quarter Interest Total	Prejudgment Total
01/01/2011-08/31/2013			\$5,504.37	\$67,815.37